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ATTORNEY GENERAL  
STATE OF IDAHO

MELISSA MOODY

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4.M. \_\_\_\_\_ FILED \_\_\_\_\_  
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CONSUMER PROTECTION DIVISION CHIEF

MAY 26 2015

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ATTORNEYS FOR THE STATE OF IDAHO

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO, through ATTORNEY  
GENERAL LAWRENCE G. WASDEN,

CASE NO. **CV 0C 1508828**

Plaintiff,

COMPLAINT

vs.

FLORISTS' TRANSWORLD DELIVERY,  
INC.

and

FTD.COM INC.

Defendants.

Plaintiff, the State of Idaho, by and through Attorney General Lawrence G. Wasden, brings this action to enjoin Defendants Florists' Transworld Delivery, Inc. and FTD.COM (hereinafter collectively referred to as "Defendants") from engaging in unfair or deceptive trade practices in

the course of offering and selling consumer goods and services, and to obtain relief for consumers victimized by the Defendants' unfair or deceptive trade practices.

### **PARTIES**

1. Plaintiff is the State of Idaho, by and through Attorney General Lawrence G. Wasden. The Attorney General is responsible for enforcement of Idaho's consumer protection laws including, but not limited to, the Idaho Consumer Protection Act, Idaho Code §§ 48-601 *et seq.*, and the Idaho Rules of Consumer Protection, IDAPA 04.02.01.

2. Defendant Florists' Transworld Delivery, Inc. is a Michigan corporation located at 3113 Woodcreek Drive, Downers Grove, Illinois 60515, that offers and sells flowers and other gifts through its subsidiary, FTD.COM Inc., at the [www.ftd.com](http://www.ftd.com) website that is available to Idaho consumers.

3. Defendant FTD.COM Inc. is a Delaware corporation that is located at 3113 Woodcreek Drive, Downers Grove, Illinois 60515, that offers and sells flowers and other gifts through its website located at [www.ftd.com](http://www.ftd.com) website, which is available to Idaho consumers.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over the Defendants pursuant to Idaho Code §§ 5-514 and 48-606(2).

5. Venue is proper in Ada County pursuant to Idaho Code § 48-606(2).

### **ALLEGATIONS**

6. The Defendants engage and have engaged in the business of offering and selling consumer goods and consumer services to Idaho consumers via the Internet through websites controlled by the Defendants.

7. Between 2005 and 2010, the Defendants entered into a number of post-transaction marketing agreements with a marketing partner named Webloyalty, Inc. (“Webloyalty” or “marketing partner”).

8. Pursuant to the Defendants’ marketing agreements with its marketing partner, the Defendants agreed to display advertisements offering free trials in Webloyalty’s membership programs, such as discount clubs, travel rewards programs, and insurance-type products. At the conclusion of the free trials, if the consumers did not cancel their memberships, the free trial converted to subscription-based programs that charged consumers monthly fees (a practice known as negative option marketing), a fact that was not adequately disclosed to consumers.

9. Some of the marketing partner’s advertisements were published in the course of consumers’ transactions with the Defendants, while in other cases the advertisements were published immediately following the consumers’ transactions with the Defendants. In other instances, the advertisements were presented to consumers with the Defendants’ logo while they were in the process of completing their transactions with Defendants. This gave consumers the impression that they were still conducting business with the Defendants (as opposed to the Defendants’ marketing partner).

10. In some instances, consumers were encouraged to respond to the marketing partner’s offers by clicking a “Continue” or “Yes” button in order to claim a discount or cash back reward on the consumer’s purchase with the Defendants, making the advertisement appear as if it were presented by the Defendants instead of a marketing partner. In other instances, consumers needed only to enter their email addresses or check a box in order to accept the marketing partner’s offer, unaware due to inadequate disclosure that, by doing so, they were agreeing to enroll in a membership program offered by a marketing partner.

11. The Defendants did not adequately inform consumers that by responding to the various advertisements placed by the Defendants' marketing partners, consumers were being directed to an entirely different website hosted by a marketing partner, where they entered into separate transactions for trial memberships, which consumers did not understand would result in their being billed for the services if the memberships were not cancelled.

12. As a result of the above-described practices, many of the consumers who enrolled in membership programs did so without knowing they were agreeing to enroll in a membership program that could cost them money they did not intend to spend. Many consumers also never availed themselves of the membership programs' purported benefits.

13. In order to facilitate the marketing partner's billing practices, the Defendants, without adequately obtaining permission from consumers, electronically passed consumers' credit or debit card account information to their marketing partner when the consumers enrolled in membership programs. This practice has more recently been made illegal under the Restore Online Shoppers' Confidence Act, 15 U.S.C. §8401 *et seq.*

14. The Defendants' privacy policies were misleading, inconsistent or failed to adequately inform consumers that the Defendants shared consumers' personal information with third parties, including the Defendants' marketing partner, when consumers enrolled in a membership program.

#### **VIOLATIONS OF LAW**

15. The allegations contained in paragraphs 1-14 are incorporated by reference as if fully alleged herein.

16. The Defendants have engaged in a course of trade or commerce that constitutes unfair or deceptive acts or practices, and is therefore unlawful under the Idaho Consumer

Protection Act, Idaho Code § 48-603(17), and the Idaho Rules of Consumer Protection, IDAPA 04.02.01.030, in that Defendants: (a) made representations, express and implied, concerning their offer and sale of membership programs, that had the capacity, tendency or effect, of misleading consumers; and (b) failed to state material facts in connection with their offer and sale of membership programs and their sharing of consumers' personal information, the omission of which deceived or tended to deceive consumers.

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays that this Court enter an Order:

A. Issuing a permanent injunction prohibiting the Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unfair or deceptive conduct, pursuant to Idaho Code § 48-606(1)(b);

B. Ordering the Defendants to pay restitution, pursuant to Idaho Code § 48-606(1)(c);

C. Ordering the Defendants to pay all attorney's fees and costs for the prosecution and investigation of this action, as provided by Idaho Code § 48-606(1)(f);

D. Ordering the Defendants to pay civil penalties in the amount of \$5,000 for each and every violation of the Idaho Consumer Protection Act, pursuant to Idaho Code § 48-606(1)(e); and

E. Grant such other and further relief as the Court deems equitable and proper.

DATED May 26<sup>th</sup>, 2015.

LAWRENCE G. WASDEN  
ATTORNEY GENERAL  
STATE OF IDAHO

BY:   
JANE E. HOCHBERG  
Deputy Attorney General